IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

LETTERS PATENT APPEAL NO. 116 OF 2005

IN

FIRST APPEAL NO. 669 OF 1987

GODREJ & BOYCE MFG.CO.LTD. ... PETITIONERS.

VS.

THE MUNICIPAL CORPORATION

FOR GREATER BOMBAY & ORS. ... OPPONENTS.

A.C.SHAH I/B. S.G.VAKIL FOR THE PETITIONERS.

A.J.BHOR FOR THE RESPONDENTS.

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CORAM : J.N.Patel and A.A.Sayed, JJ.

DATE : July 31, 2007.

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P.C.

1. Heard.

2. By this LPA the appellant challenges the notice issued under Section 167 and Section 162 (2) of the B.M.C. Act, under which, the Assessment Officer fixed the rateable value at Rs. 6457/-,

being capital value rate at Rs. 4/- per square meters, instead of Rs. 3/- per square meters as originally assessed.The matter was carried in Appeal by the Appellant to the Court of Small Causes at Bombay, which rejected the Appeal, against which the First Appeal came to be filed, which came to be dismissed on 15.9.2000. This is how the Letter Patent Appeal came up before this Court.

3. Mr. Vakil, the learned Counsel appearing for the appellant submitted that the Appeal Court as well as the High Court failed to take notice of the fact that the officer of the Municipal Corporation has failed to comply with the requirement of Section 167 (1) & (2) of the Act, having denied an opportunity of hearing to the Appellant, which is contrary to the combined effect of Section 160 to 167 of the Act and consequently, had proceeded on a wrong premise that the value was increased only because the construction activity started.

4. In so far as the first issue raised by the Appellant, relating to non compliance with the provisions of Section 167 (1) & (2) of the Act is concerned, we have called for the record and proceedings and we do not find that the respondents

failed to give any opportunity of hearing to the Appellant as contemplated under the Scheme, which is also evident from the fact that aggrieved by the decision of the Competent Authority, the Appellant did prefer an appeal under Section 217 of the BMC Act, which ultimately came to be dismissed.

5. On the second count, it is the contention of the learned Counsel for the appellant that the learned Single Judge erred in holding " that the Counsel picked up a few sentences here and there to indicate that the rateable value was increased only because of the construction activities had started", without any indication of such sentences why or for what reason he did not think the same worth considering and effective. On the other hand, the very basis of change in the valuation was on the ground that there has been an increase in the rateable value due to construction activities.

6. We have gone through the impugned Order and we find that the learned Single Judge has taken into consideration the decision of the Supreme Court, which was relied upon by the Appellant in the case of BOMBAY MUNICIPALITY VS. PLOYCHEM LTD., REPORTED IN AIR 1974 SC. 1779, which is not applicable to the

facts of the present case, as the basis on which the rateable value came to be increased is development of the land and not the construction activity of the nature contemplated in the Act. Further the increase in the rateable value and the assessment is also justified when the rateable value of the adjoining plots has been similarly increased and, therefore, we do not find any merit in this Letters Patent Appeal. The impugned Order does not call for any interference.

. Consequently, the LPA is dismissed with no Order as to costs.

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[J.N.Patel, J.]

[A.A.Sayed, J.]